

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF YUMA

THIS AGREEMENT is entered into 11th of May 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. The State and the City mutually agree that it is in the best interest of the parties to design and reconstruct improvements to State Route 280 a National Highway System route of significance to the City, State, and United States Marine Corps between mile-post 0.01 - 1.16, as shown on Exhibit A, attached hereto and made a part hereof. The total cost of the project is estimated at \$6,500,000.00. This agreement is for rights-of-way acquisition, design, construction; design and construction contingencies; and engineering administration all at the State's expense. Work will include widening and improvements, but not limited to drainage, bridge widening, street lighting, signalization and signage improvements, hereinafter referred to as the "Project". With the approval and by resolution of the Transportation Board the State will abandon ownership jurisdiction and maintenance responsibilities upon transfer of funds. The City will accept maintenance responsibilities upon transfer of funds and waive the requirements of Arizona Revised Statutes Section 28-7209. The City will be the lead agency.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26818
Filed with the Secretary of State
Date Filed: 05/11/04

Janice K. Brewer
Secretary of State

By: Darryl D. Haernewald

II. SCOPE OF WORK

1. The City will:

- a. Administer the Project using the design prepared by the State.
- b. Acquire any additional required right-of-way for the Project. Obtain all necessary permits and easements from but not limited to the United States Department of the Navy, The United States Bureau of reclamation, the Yuma Mesa Irrigation & Drainage District and the Union Pacific Railroad.
- c. Upon approval call for bids and award one or more construction contracts for the Project. Administer same, and make all payments to the contractor(s). Confer with the State on any Project related contract modifications or "force account" work. Be responsible for any contractor claims for extra compensation due to delays or any other reason.
- d. Upon advertising of the Project remit an invoice to the State for an amount not to exceed \$6,100,000.00 to be paid in the Fiscal Year of 2006 for the right-of-way acquisition, utility relocation, and construction of the Project.
- e. Waive the requirements of Arizona Revised Statute 28-7209.
- f. Upon approval by resolution of the Transportation Board and City Council, of the reconstruction of SR 280 from Milepost 0.01 to Milepost 1.16, as shown on Exhibit A, the City will accept ownership jurisdiction and maintenance responsibilities upon final transfer of funds.

2. The State will:

- a. Prepare and provide design plans, right-of-way plans specifications and such other documents required for the Project estimated at \$400,000.00 all at the State's expense. Incorporate or resolve City's review comments.
- b. Upon approval by resolution of the State Transportation Board and transfer of funds, abandon ownership jurisdiction and maintenance responsibilities of the Project.
- c. Upon advertising of the Project and within (30) days of receiving and approving an invoice pay the City an amount not to exceed \$6,100,000.00 of State obligated funds in Fiscal Year of 2006 for the right-of-way acquisition, utility relocation, and construction of the Project.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until abandonment and final transfer of funds. This agreement, may be cancelled at any time prior to the commencement of performance under this agreement, upon thirty (30) days written notice by either party.
2. This agreement shall become effective upon filing with the Secretary of State.
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
5. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party relating to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17 Avenue, MD 616E
Phoenix, AZ 85007

City Administrator
One City Plaza
P.O. Box 13014
Yuma, AZ 85366-3014


7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In accordance with Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF YUMA, ARIZONA

By 
ROBERT L. WAGNER
City Administrator

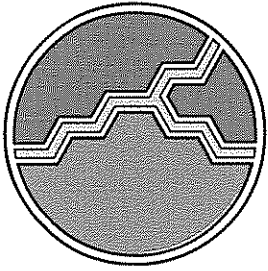
STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

By 
BRIGITTE M. KUIPER
City Clerk



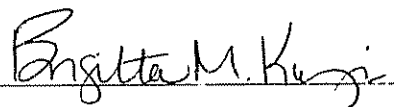
City of YUMA

**Office of the
City Clerk**

One City Plaza
P O Box 13012
Yuma, Arizona 85366-3012
(928) 373-5035
FAX (928) 373-5036
TTY (928) 373-5149

CERTIFICATION

I, Brigitta M. Kuiper, do hereby certify that I am the duly appointed City Clerk of the City of Yuma, Arizona, and that the attached Resolution, R2004-25, is a true and correct copy of the document on file in the Office of the City Clerk.



Brigitta M. Kuiper, City Clerk

4/8/04
Date

RESOLUTION NO. R2004-25

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,
ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF
AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF
ARIZONA, FOR THE DELEGATION OF CONSTRUCTION, OPERATION
AND MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS AND
THE CONVEYANCE OF RIGHT-OF-WAY OF JURISDICTION FOR
STATE ROUTE 280**

WHEREAS, the State of Arizona (State) has determined that the widening and improvements of State Route 280 (Avenue 3E); and,

WHEREAS, the State has engaged the design of said improvements and widening of Avenue 3E, between State Milepost 0.01 and Milepost 1.16 (Project); and,

WHEREAS, the State has determined that the assumption of authority to construct, operate and maintain certain public improvements to Avenue 3E and the jurisdiction over same would be appropriately held and served by the City of Yuma (City); and,

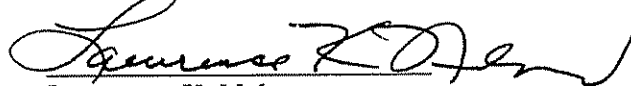
WHEREAS, the State has decided to provide the completed Project design to the City and to provide funds to the City for the completion of the designed improvements, in the amount of \$6,100,000.00; and

WHEREAS, the City has committed to utilization of said funds for the completion of the public improvements and widening of Avenue 3E, based upon the above provisions.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof.

Passed and adopted this 7th day of April, 2004.

APPROVED:



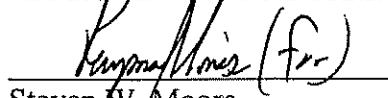
Lawrence K. Nelson
Mayor

ATTESTED:



Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:

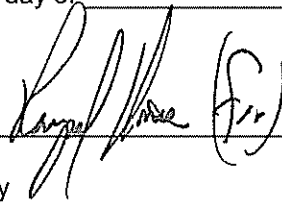


Steven W. Moore
City Attorney

APPROVAL OF THE CITY OF YUMA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF YUMA, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this Apr 13 day of _____, 2004.



City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0460TRN (**JPA 02-207**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 5, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section